

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

UNITED STATES OF AMERICA, CRIMINAL ACTION

Plaintiff Docket: 2:14-cr-69-JDL-9

-versus-

JEAN TONY VALBRUN,

Defendant

Transcript of Proceedings

Pursuant to notice, the above-entitled matter came on for **Sentencing** held before **THE HONORABLE JON D. LEVY**, United States District Court Judge, in the United States District Court, Edward T. Gignoux Courthouse, 156 Federal Street, Portland, Maine on the 9th day of June, 2016 at 2:00 p.m. as follows:

Appearances:

For the Government: David B. Joyce, Esquire
Assistant United States Attorney

For the Defendant: Neale A. Duffett, Esquire

Dennis R. Ford
Official Court Reporter

(Prepared from manual stenography
and computer aided transcription)

1 (Open court. Defendant present.)

2 THE COURT: Good afternoon.

3 MR. JOYCE: Good afternoon, Your Honor.

4 THE COURT: We're now proceeding in the case
5 of United States versus Jean Valbrun. This is docket
6 15-cr-69. Counsel, please identify yourself for the
7 record.

8 MR. JOYCE: David Joyce for the United States,
9 Your Honor.

10 MR. DUFFETT: Neale Duffett for Mr. Valbrun.

11 THE COURT: Thank you. Mr. Joyce, has the
12 Government provided notice to any victims entitled to
13 notice by law?

14 MR. JOYCE: There are none in this case, Your
15 Honor.

16 THE COURT: Thank you. Mr. Valbrun, I'd like
17 you to stand please. Mr. Duffett, I know you suffered
18 an injury. If it would be better for you to be seated
19 today, that's fine.

20 MR. DUFFETT: That's okay, Judge. That's
21 fine.

22 THE COURT: All right. Mr. Valbrun, we're
23 here for a sentencing and the overall-purpose of this
24 hearing is for me to issue a sentence based upon your
25 conviction. I'm going to hear from the attorneys and

1 I'll hear from you as well if you wish to speak. I'll
2 also hear from any witnesses that either side may
3 present.

4 Now, I'm going to be asking you and Attorney
5 Duffett a series of questions. I want to be certain of
6 a number of things. The first is that you've received,
7 you've read, you understand the revised presentence
8 report that was issued in this case so we will be
9 discussing that.

10 I also want to make sure that there's nothing that
11 in any way interferes with your ability to understand
12 what is taking place in the courtroom today, and
13 finally, overall it's my goal to make sure you
14 understand the sentence that I impose and the reasons
15 for it.

16 So I'm going to ask you some questions. If you
17 don't understand the question, let me know. I'll
18 rephrase it. If you want to have a chance to speak to
19 Attorney Duffett before you respond, that's fine. Just
20 let me know; do you understand?

21 THE DEFENDANT: Yes.

22 THE COURT: Why don't you pull the microphone
23 please closer to you. Mr. Valbrun, have you used any
24 drugs or alcohol in the past 48 hours?

25 THE DEFENDANT: No, Your Honor.

1 THE COURT: Are you currently taking any
2 medication?

3 THE DEFENDANT: No, Your Honor.

4 THE COURT: How far did you go in school?

5 THE DEFENDANT: Graduate high school.

6 THE COURT: And you can read and write,
7 correct?

8 THE DEFENDANT: Yes.

9 THE COURT: Do you understand why you are here
10 today?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: And what do you understand the
13 purpose of this hearing to be?

14 THE DEFENDANT: Sentencing.

15 THE COURT: I didn't hear you.

16 THE DEFENDANT: Sentencing.

17 THE COURT: Sentencing. Is there anything
18 which might in any way interfere with your ability to
19 understand what is taking place today and what is being
20 said or for that matter even hearing it?

21 THE DEFENDANT: No.

22 THE COURT: No?

23 THE DEFENDANT: No.

24 THE COURT: And do you authorize Attorney
25 Duffett to act and speak on your behalf throughout this

1 hearing?

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: Attorney Duffett, have you read
4 and discussed with Mr. Valbrun the revised presentence
5 report in this case?

6 MR. DUFFETT: Yes, Your Honor.

7 THE COURT: I take it you've had ample time to
8 do that?

9 MR. DUFFETT: Yes, sir.

10 THE COURT: Mr. Valbrun, have you read the
11 revised presentence report in this case?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: You've read the entire document?

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: I take it that you understood it?

16 THE DEFENDANT: Yes.

17 THE COURT: And you've had plenty of time to
18 discuss it with Mr. Duffett; is that correct?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: Attorney Duffett, in your written
21 submission, or I should say in the revised presentence
22 report itself, there's an indication that you object to
23 the provision in the report regarding Mr. Valbrun's
24 role in the offense.

25 MR. DUFFETT: Yes.

1 THE COURT: And I'll be hearing from you and
2 Attorney Joyce regarding that in just a moment, but
3 apart from that, other than that objection, does Mr.
4 Valbrun object to anything else that's contained in the
5 revised presentence report?

6 MR. DUFFETT: No.

7 THE COURT: Mr. Valbrun, as I just indicated,
8 there is one issue I'm going to have to resolve. It
9 relates to the level of your role in the offense and
10 whether you should receive -- at what level you should
11 receive a reduction for your role in the offense and
12 I'm going to take up with the lawyers in just a moment,
13 but apart from that question, is there anything else in
14 this report which you've told me you've read and
15 understand, is there anything else in that report that
16 you disagree with?

17 (Discussion off the record between the
18 defendant and counsel)

19 THE DEFENDANT: No, Your Honor.

20 THE COURT: And so as far as you know to your
21 personal knowledge, the report is true; is that right?

22 THE DEFENDANT: That's correct, Your Honor.

23 THE COURT: And Attorney Duffett, do you agree
24 that apart from the issue that you've identified as
25 being in dispute here, the report is otherwise accurate

1 and correct in all respects?

2 MR. DUFFETT: Yes, sir, other than
3 Paragraph 19.

4 THE COURT: All right. And so Mr. Valbrun,
5 you can be seated for now and Attorney Duffett, I'll
6 hear from you first on the issue of the guidelines and
7 Mr. Valbrun's role in the offense.

8 MR. DUFFETT: I just have argument on that,
9 Judge, thank you. Paragraph 19 in the PSR finds a two
10 level reduction for minor role. I submit that a four
11 level reduction for minimal participant is appropriate.

12 Judge, you're very familiar with the facts of this
13 case and the facts of all of the other co-defendants
14 and related cases in this matter and I just wanted to
15 state that I believe the facts would support a larger
16 reduction of three or even four levels.

17 If you look at the Application Note of 3E1.2, and
18 Application Note 3, there is a list of factors to
19 consider in determining where the minor or minimal role
20 might assign and they include the degree to which the
21 defendant understood the scope and structure of the
22 criminal activity, the degree to which the defendant
23 participated in planning or organizing the criminal
24 activity, the degree to which the defendant exercised
25 decisionmaking authority, and the nature and extent of

1 the defendant's participation and his responsibility
2 and discretion that he had in conforming to that and
3 the degree to which the defendant stood to benefit from
4 this criminal activity and I would suggest that the
5 facts in this case, certainly as opposed to Mr.
6 Duffaud, who had a two level reduction, Mr. Valbrun's
7 participation is even less than that and I think the
8 fact that justifies a three level reduction indeed
9 should be a four level reduction considering his
10 relationship with Mr. Duffaud and his relationship to
11 the entire criminal enterprise.

12 He, Mr. Valbrun, was charged only with possession
13 with intent. He was not charged with conspiracy.

14 THE COURT: What, in your view, makes Mr.
15 Valbrun's participation substantially different from
16 Mr. Duffaud's?

17 MR. DUFFETT: I think Mr. Duffaud recruited
18 Mr. Valbrun. I think the sentencing memorandum of Mr.
19 Duffaud and the trial testimony supports the concept
20 that Mr. Duffaud rented the car and sought out Mr.
21 Valbrun to drive the car and I think the testimony of
22 Jacques Victor supported that and he said that this was
23 Mr. Valbrun's only involvement.

24 THE COURT: Thank you.

25 MR. DUFFETT: That's all I have.

1 THE COURT: Thank you. Attorney Joyce.

2 MR. JOYCE: Your Honor, I would submit that
3 Mr. Duffaud and Mr. Valbrun should receive the same
4 reduction. Both of them were aware of what was
5 happening before they left.

6 Mr. Valbrun was directed by Mr. Victor to hide the
7 stuff well. That was one of the intercepts the Court
8 heard before at trial. There were intercepts played at
9 trial where Mr. Valbrun was interested in receiving his
10 benefit from making the trip. My recollection is he
11 said it was a phone that he was coming to pick up. Mr
12 Victor testified that it was money.

13 Mr. Valbrun was the operator of the vehicle,
14 knowing that there were drugs in the vehicle as the
15 jury so found, and I would submit to the Court that
16 there's little to distinguish the role of Mr. Valbrun
17 and Mr. Duffaud and this basis, they should be treated
18 the same.

25 MR. JOYCE: Your Honor, I'm relying on what I

1 submitted as a trial brief, which was intercept number
2 1181 where Mr. Victor said when he called Mr. Valbrun's
3 phone, look for a good place to hide it -- excuse me,
4 look for a good place in the car to hide it well for me
5 and, quote, don't let the person driving act like a
6 monkey, do the speed limit.

7 THE COURT: And that transcript reflects that
8 the other person on the phone was Mr. Valbrun?

9 MR. JOYCE: I don't have the transcript in
10 front of me, Your Honor, and I don't recall what Mr.
11 Victor's testimony was on that point.

12 THE COURT: Right. Would you please remind me
13 what transcript number that is?

14 MR. JOYCE: Session 1181 from 1:59 p.m.

15 THE COURT: Okay. Also, Attorney Joyce, I
16 want to ask you this. In characterizing Mr. Valbrun's
17 role in this offense, should we be assessing it
18 relative to Mr. Duffaud alone or should we be -- since
19 he and Mr. Duffaud are charged and they are the only
20 defendants charged with respect to the count for which
21 Mr. Valbrun was convicted, or should his role be
22 considered in the context of the broader indictment in
23 this case and the other individuals involved?

24 MR. JOYCE: Your Honor, it's clear that Mr.
25 Valbrun was being held accountable only for the one day

1 and the drug quantities upon which he personally
2 participated and not other aspects of the conspiracy.

3 I don't think the guidelines preclude the Court
4 from considering his role as it relates simply to the
5 count of conviction. There's no question that he's
6 less culpable than other conspirators, but I think when
7 the Court looks at what he is being held accountable
8 for here and his role on the -- in the events that led
9 to this conviction and the charge with which he faced,
10 a two level reduction is appropriate.

11 In the event he were held responsible for
12 conspiracy-wide quantities, which could be
13 substantially more, perhaps it would be more
14 appropriate to look at his role in the broader context.
15 I'm not saying the Court is limited to taking that
16 view, but I think when considering his role with what
17 he's been convicted of and how it relates to Mr.
18 Duffaud and the Court's determination in Mr. Duffaud's
19 case, a two level reduction is appropriate.

20 THE COURT: Thank you. Attorney Duffett,
21 anything further on this point?

22 MR. DUFFETT: Judge, only on that question of
23 the transcript, I don't have that in front of me, but
24 as I recall, he, Mr. Victor, was speaking with Mr.
25 Duffaud and that's why he said make sure the driver

1 obeys the speed limit or something like that. Thank
2 you.

3 THE COURT: All right. I have not brought the
4 transcripts out on the bench with me. Excuse me just a
5 moment. There are some wires that grabbed on to my
6 foot.

7 I don't have the transcripts with me and actually
8 to me that's a significant point and so I want to take
9 a recess so I can retrieve the transcript and take it
10 look at it. That shouldn't take any more than about
11 five minutes, so we will take a brief recess at this
12 time.

13 (Time noted: 12:18 p.m.)

14 (Recess called).

15 (Time noted: 12:22 p.m.)

16 THE COURT: The transcript that was identified
17 in the trial record materials as session number 1181
18 does reflect that the conversation which occurred on
19 March 16, 2014, in which Mr. Victor says, among other
20 things, look for a good place in the car and hide it
21 well for me. Look under, if you can search under, if
22 you can go under physically yourself and so on was with
23 Mr. Valbrun.

24 Based upon the revised presentence report as well
25 as the trial evidence in this case, I find that Mr.

1 Valbrun's role in the offense was substantially the
2 same as Mr. Duffaud. They each similarly performed
3 different functions, but working together they both
4 secreted drugs in the vehicle, in a rented vehicle,
5 which was then driven from Boston to Maine by Mr.
6 Valbrun with Mr. Duffaud in the driver's seat. They
7 were both involved in communications with Mr. Victor.

8 I don't see a basis for distinguishing the level
9 of participation that they had in this offense.
10 Therefore I conclude that the two level adjustment that
11 is currently contained in the revised presentence
12 report is the appropriate level of adjustment for
13 purposes of section 3B1.2 of the sentencing guidelines.

14 Anything further on that point?

15 MR. JOYCE: No, Your Honor.

16 MR. DUFFETT: No, sir.

17 THE COURT: All right. And so with that
18 ruling, I take it there are -- and I've heard no other
19 objections to the revised presentence report, correct?

20 MR. JOYCE: Correct.

21 MR. DUFFETT: Correct.

22 THE COURT: With that then, I will now hear
23 from the Government with respect to the sentence.

24 MR. JOYCE: Your Honor, it's clear from the
25 trial testimony what happened here and why it is we are

1 here. I want to take a minute now that we've compared
2 Mr. Duffaud to Mr. Valbrun and their conduct to
3 distinguish their conduct that happened after they were
4 arrested and to suggest to the Court that Mr. Duffaud's
5 sentence should include a starting point here because
6 Mr. Valbrun's conduct is so different.

7 Mr. Duffaud accepted responsibility. He pled
8 guilty. He expressed remorse. Mr. Valbrun did not.
9 Mr. Valbrun not only exercised his right to a trial, he
10 also testified at that trial and provided to the jury a
11 version of events that I would suggest were wholly
12 incredible. Should the jury have believed them, he
13 would have been acquitted. It simply can't be said
14 that anything but the fact that the jury flatly
15 rejected his version of events.

16 What's also different as far as their conduct
17 during the commission of the offense is that not only
18 was Mr. Valbrun and Mr. Duffaud in the car, but there
19 were two children, at the time age two and age nine.
20 The three-year old Mr. Valbrun's son. The nine-year
21 old was the child of a significant other who the PSR
22 indicates he has significant fatherly responsibilities
23 over. I can't comprehend why anybody would bring a
24 two-year old and a nine-year old on a drug run.

25 Drug trafficking is a very dangerous business.

1 It's not a business for children and the only
2 explanation I can think of as to why those two kids
3 were in the car was to throw off the police as to what
4 the purpose of that trip was.

5 It was clearly a drug delivery. It wasn't a
6 social visit. Mr. Valbrun was most concerned on the
7 phone about when he was going to get his money from Mr.
8 Victor. This was a profit endeavor and I can't think
9 of any rational explanation for why a two-year old and
10 a nine-year old would be in the car. It just -- it's
11 shocking and it's -- I don't quite know how to suggest
12 to the Court it should impact on the sentence, but when
13 the Court thinks about the nature and circumstances of
14 the offense, that's a factor I would suggest the Court
15 should consider.

16 We also have 225 grams of heroin. No question
17 that heroin is destroying this district, it's ripping
18 apart families, it's killing people and there's no
19 doubt that 225 grams of heroin on the streets of
20 southern Maine would have a devastating impact. That's
21 not to set aside in any way the 100 grams of crack that
22 were also in there which destroys people's lives in
23 somewhat similar ways.

24 I think the Court would be well within its
25 discretion in this case to impose a sentence that's at

1 or near the guideline range. That's a substantial
2 difference from what the Court imposed on Mr. Duffaud,
3 but there are factors in this case that I've just gone
4 through that I think warrant a substantially different
5 treatment. Maybe a guideline sentence is too severe,
6 but I think a departure or a variance of any
7 significant amount is not warranted and I'd ask the
8 Court to impose a sentence at or near the guideline
9 range.

10 THE COURT: Thank you.

11 (Discussion off the record between the
12 defendant and counsel).

13 MR. DUFFETT: Thank you, Judge. First of all,
14 procedurally, I want to reassert and preserve all
15 pretrial motions, all trial motions and all post trial
16 motions filed by the defendant.

17 THE COURT: So noted.

18 MR. DUFFETT: Thank you. We did submit a
19 number of documents to the Court and I want to make
20 sure that you have those, sir. There was a letter that
21 I think went directly to you from his pretrial
22 supervision officer from Massachusetts.

23 THE COURT: Yes, I have that.

24 MR. DUFFETT: Thank you. There are some
25 documents from Cumberland County Jail, which we had

1 delivered to the Court on May 10th. 4 pages of --

2 THE COURT: I have that.

3 MR. DUFFETT: Thank you. And there's also on
4 May 10th we submitted a number of letters from family
5 and friends prior to that date.

6 THE COURT: I have the letters.

7 MR. DUFFETT: Thank you, sir. And also, we
8 filed a motion for a variant sentence. The number on
9 that is docket 1163.

10 THE COURT: I have received that, yes.

11 MR. DUFFETT: Thank you. The letter from the
12 supervision officer in Massachusetts that he supervised
13 for a very lengthy period of time, Mr. Valbrun was on
14 pretrial release and supervision and did well. While
15 on release, he was ordered to this office in a manner
16 as directed by the Court and maintained suitable
17 employment. While on release, the defendant abided by
18 the directives of the probation office and was
19 compliant in home contacts and other interactions with
20 the probation officer.

21 Overall, the defendant was able to adjust to his
22 pretrial supervision well and demonstrated positive
23 strides during this period of time. That, I understand
24 it, is a distinction from what Mr. Duffaud did on
25 pretrial supervision, I believe -- maybe it was post

1 trial, I'm not sure -- post plea, he ended up violating
2 and committing a new offense.

3 The document that we submitted from the jail
4 indicate that Mr. Valbrun availed himself of programs
5 there and he's done well. There's a religious program
6 certificate, computer skills class, a goal setting
7 workshop and a construction industry standards ten-hour
8 course which would, I think, indicate to you, Judge,
9 and supports the idea that Mr. Valbrun is a hard
10 worker, had a good employment history, has paid taxes
11 for many, many years and I think this reflects his
12 desire to get back into the workforce where he can get
13 a good job and support his family.

14 (Discussion off the record between the
15 defendant and counsel)

16 There are a number of letters that we submitted,
17 Judge, and I'm just going to read from a few of them
18 which indicate -- at least gives an idea of the kind of
19 person Mr. Valbrun is. The last letter in the
20 submission is from Rebecca Miller. She's the
21 vocational instructor at the jail and she wrote -- and
22 they don't always write these kinds of letters and
23 we're happy that she did and she did this because she
24 considers Jean a good person.

25 He is pleasant in class, does not miss his

1 classes, seems to enjoy learning whatever he is there
2 to meet and that he will take new classes that are
3 available. I will not hesitate to add him to future
4 classes as they are offered, and again I think this
5 letter supports the idea that Mr. Valbrun is a hard
6 worker and provider for his family.

7 Now, some of the other letters in this package,
8 Judge, I think may give you a good idea of who Mr.
9 Valbrun is. The first letter from his fiancé to Jean
10 Valbrun indicates that they have a four-year old son
11 together and Jean is a wonderful father. Then she
12 relates an incident where giving birth to their son,
13 she almost lost her life due to complications and he --
14 Jean stood by her throughout that ordeal and has stood
15 by them ever since and supported her and their son.

16 She followed up in her last paragraph by saying my
17 mother and the whole extended family and my children,
18 teachers, doctors all find this to be a huge shame and
19 sadness that someone who is hardworking and great
20 father has to be away from us. We're all hopeful we
21 can have him home soon.

22 Then the fourth letter down from Santiago, a
23 friend of the family for the past ten years, indicates
24 that I'm fully aware of the gravity of the crime. This
25 is not the person I know and I'd like to give you a

1 perspective that shows he's more than the sum of his
2 actions on the day of the crime.

3 He has a strong sense of responsibility and
4 obligation which applies to his family, his work and
5 the community. He grew up in an impoverished area of
6 Boston and began working at an early age to help his
7 mother provide and care for his younger sister. To his
8 friends and former co-worker, Mr. Valbrun is and always
9 has been willing to lend a hand whenever someone is in
10 need, whether that's giving them a ride, fixing a
11 neighbor's car or giving a homeless man at the end of
12 the street some spare change, Mr. Valbrun was always
13 helping out.

14 He goes on to say that he possesses a great deal
15 of integrity and is someone who can always be counted
16 on. And he follows that Mr. Valbrun, it's unfortunate
17 he made some poor decisions that led him to where he is
18 now, however I strongly believe that he has learned
19 from this situation and wants to become a better person
20 and a role model for his young son.

21 And four letters down from that from Merline,
22 close friend of the family, she concludes by saying
23 unfortunately, Mr. Valbrun has made a poor decision,
24 but I know he has learned his lesson. To give him a
25 chance, he will reestablish his career if he can and

1 continue to be a positive role model in his son's life.

2 Now, our motion for a variant sentence, Judge,
3 we're asking the Court for a significant variant
4 sentence downward and essentially the reasons that we
5 give are outlined in the motion, but it's clear, Judge,
6 that any sentence the Court imposes, one of the goals
7 of Section 8553 is to promote respect for the law and
8 to provide just punishment and the 1st Circuit has
9 commented on that in U.S. v. Martin, 520 F.3d 87
10 (2008).

11 The subpart of section 3553(a) directs that a
12 sentencing court consider the need for a sentence to,
13 quote, promote respect for the law and to provide just
14 punishment for the offense.

15 Then the Gall case, G-A-L-L case, the court
16 observes -- Supreme Court case -- respect for the law
17 diminishes the natural principles of justice, such as
18 the principle that punishment should correlate with
19 culpability are ignored. With this thought in mind, we
20 have on several occasions recognized that District
21 Court's have discretion in appropriate cases to align
22 co-defendant sentences somewhat in order to reflect
23 comparable degrees of culpability, at least in those
24 cases where disparity are conspicuous and threaten to
25 undermine confidence in the criminal justice system.

1 With that in mind, Judge, we want to stress the
2 history and characteristics of Mr. Valbrun. The
3 presentence report covers it beautifully. It's a well
4 done presentence report and it gives you a good idea of
5 the family background and his work history in this
6 country.

7 As you can see by the number of people in the
8 courtroom today, he comes from a large and extended and
9 supportive family, something we don't often see in this
10 courtroom. They have all come up here from Boston
11 today, Judge, for this.

12 No prior criminal convictions, excellent
13 employment history unlike so many that we see here.
14 Good support from his hardworking extended family, good
15 relationship with his fiancé, no history of alcohol or
16 substance abuse.

17 Another 3553(a) factor is nature of the offense.
18 The Court's well-aware of the offense in this case. It
19 was a nonviolent offense, one time conduct with a
20 relatively minimal role.

21 Does Mr. Valbrun have personal and vocational
22 plans? He certainly does. His goal is to get this
23 past him and to get back into the community so that he
24 can work on the goals that we state in our motion,
25 including go to and attend and graduate from the

1 Benjamin Franklin Institute of Technology in
2 Massachusetts, get a degree in auto mechanics. He's
3 worked, I think, for Jiffy Lube for eight years down
4 there and does a good job. He wants to get a good job
5 in the same field when he gets out and hopefully start
6 his own business in that field, all with the goal of
7 providing a good home for his fiancé and children.

8 Now, I think, Judge, all of this -- we have a few
9 speakers that briefly want to speak to you, but before
10 they do, I think I guess what we're saying is that all
11 of these factors I'm urging the Court to view in
12 regards to the mandate of the 3553, to avoid sentencing
13 disparities and as our motion indicates, if Mr. Valbrun
14 was sentenced inside the guideline range, he would --
15 it would be the fourth longest sentence in this very
16 large case. It seems to, I would argue, cast some
17 doubt on the justice system. It would not serve to
18 promote respect for the law and it would not be a just
19 punishment.

20 Now, I realize you have to balance all of these
21 factors in considering a variant sentence and there's
22 no question that Mr. Valbrun went to trial. Mr.
23 Valbrun testified, he was found guilty. It's ironic
24 that of all the related co-defendants, I don't know how
25 many there are, there's at least a dozen if not more,

1 he's the only one that went to trial and it would truly
2 be ironic and unfair if his sentence was one of the
3 very top sentences imposed in this case.

4 I'm urging Court to look at these factors with
5 that as a background because he does have positive
6 things in his life. He does have a family, he does
7 have goals. He's not a loser, as we often see in this
8 court. So I would urge the Court to consider a
9 significant downward departure out of that guideline
10 range.

11 We do have three speakers, Judge, if you would
12 allow that.

13 THE COURT: Yes, of course.

14 MR. DUFFETT: Thank you. First of all, we'll
15 have a friend. Come on up.

16 THE COURT: If you would please state your
17 full name and spell your last name.

18 MR. AMANTAN: Santiago Amantan.

19 A-M-A-N-T-A-N.

20 THE COURT: Thank you. Please go ahead.

21 MR. AMANTAN: Your Honor, before you decide
22 anything, I would like to say Jean Valbrun, I know him
23 for so long and he's a good man, good father and a good
24 friend. His heart -- and I know that he made some bad
25 decisions and I know he learned his lesson and as his

1 friend, family, we want him back. We love him and we
2 just want him back and we want him back to be with his
3 son, his family, his loved ones and just love him.
4 Thank you.

5 THE COURT: Thank you.

6 MR. DUFFETT: We have Jean's sister Sonia
7 Valbrun.

8 THE COURT: Please state your full name and
9 spell your last name.

10 MS. VALBRUN: Marie Sonia Valbrun,
11 V-A-L-B-R-U-N.

12 THE COURT: Thank you. Please go ahead.

13 MS. VALBRUN: He is my little brother. He is
14 a family guy. He's a hard worker and I also have three
15 kids of my own. I have my 13-year old, my 9 year old,
16 he's here with me and I also have a four-year old. So
17 he helped me. My kids don't even call him uncle. All
18 me three of my kids call him daddy. He always tried to
19 help me dropping them to school, pick them up for me
20 and I have my nine-year old, she has asthma. Sometimes
21 she goes to the hospital for weeks or days. He's
22 always there when I'm out at the hospital. He would
23 always come and sleep with her and help me out because
24 I have three.

25 So it's like we ready for him. If it was a

1 lesson, he learned his lesson, but we all out there
2 suffering. His kid, his own son, always comes to my
3 house. The first thing he asks is where is my dad so I
4 have to lie to him. I said your dad went on vacation,
5 he is coming back home.

6 In school he always be crying. Sometimes they
7 call me at work, I can't work the way I used to because
8 I need to help with my kids. The teacher always be
9 calling me because he is crying out and asking for
10 daddy. I am the one they call, so I have to go and
11 pick him up from school and the mother is suffering
12 through, but we try to work it out together.

13 I would like to see if he could come home, do the
14 best he can like he usually do and everybody miss him.
15 We all want him to come back home.

16 THE COURT: Thank you.

17 MR. DUFFETT: And finally, Judge, his aunt.

18 THE COURT: If you would please state your
19 full name and spell your last name.

20 MS POWELL: Janet Powell, P-O-W-E-L-L.

21 THE COURT: Thank you, go ahead.

22 MS. POWELL: I just want to say, you know,
23 first of all my son, he's four and he's growing up
24 without a father, it's so hard. He cries every night,
25 mommy I want daddy, and we usually pray for him every

1 night before bed. He did him everything and I just
2 think that he made a big mistake and I know that he
3 learned from this.

4 He's really not a bad guy and everybody just
5 misses him, not only for me, Your Honor, but I pray
6 that you find it in your heart to give him something
7 that can send him back to his son and his family.

8 His son is really suffering. He suffers from
9 asthma and he has asthma attacks so often and every
10 time he went to the hospital, he would leave work, ask
11 for time off so he can spend the time in the hospital
12 with his son and his son loves him so much. And our
13 way back from Maine when this all happened, he said oh,
14 what's your name to Santiago and I said his name is
15 Santiago and he said Santiago, turn back and go get my
16 daddy. He's the only one that's left there and I need
17 my daddy. And I couldn't help him. I don't know what
18 to tell my son.

19 He's like so affected by it. I don't know, it's
20 another kid growing up with no father and it makes such
21 a huge different to have a man whose involved with his
22 kids and I just think he's not a bad person.

23 He goes to church every Sunday, he pray at night,
24 he provides for his family, he's always worked and at
25 times when I was like take him down, he would make sure

1 I'm okay. He checks up on me, he's so good to my
2 family also and everybody just misses him.

3 He takes care of my daughter, who she's not his
4 daughter biologically, but he's been there since she
5 was two years old and she's known him all her life and
6 she's in school right now. I just don't want them to
7 see him in this situation and I pray that he can come
8 back home and I know that he will be working and do the
9 right thing and I just pray that you can, you know,
10 find it in your heart to forgive him and send him home
11 for us.

12 THE COURT: Thank you.

13 MR. DUFFETT: That's all I have, Judge. I
14 would just add that throughout my representation of Mr.
15 Valbrun, I've been very close with these people and
16 they've been very involved in this case. They call me
17 all the time. I send them updates all the time and as
18 the presentence report indicates, they are successful
19 people. They are good members of the community down
20 there in Boston and it's an incredibly close family and
21 I've never seen a family quite this large and quite
22 this close. So that's all I have, Judge. Thank you.

23 THE COURT: Thank you. Mr. Duffett, I want to
24 just have the record be clear about the exhibits that
25 you've submitted today. First of all, with respect to

1 your letter of May 10th, which had attached to it -- 13
2 letters, you've not marked that yet; have you?

3 MR. DUFFETT: No, sir.

4 THE COURT: So we will have it marked as
5 Defendant's Exhibit 1. Is there any objection?

6 MR. JOYCE: No, sir.

7 THE COURT: That's admitted then. We have
8 also your letter of May 10th which enclosed four pages
9 of documents from the Cumberland County Jail. This can
10 be marked as Defendant's 2; is there any objection to
11 its admission?

12 MR. JOYCE: No, Your Honor.

13 THE COURT: We also have the two page letter
14 from Marleny Ramedehal, U.S. probation officer from
15 the District of Massachusetts, dated May 11, 2016,
16 which can be marked as Defendant's Exhibit 3; is there
17 any objection?

18 MR. JOYCE: No, Your Honor.

19 MR. DUFFETT: Thank you, Your Honor.

20 THE COURT: Mr. Valbrun, if you will stand
21 please. As a defendant who is before the Court for
22 sentencing, you have the constitutional right to speak
23 and to address me at this time, but only if you wish.
24 You're not required to speak. It's totally up to you,
25 would you like to speak at this time?

1 THE DEFENDANT: No, Your Honor.

2 THE COURT: All right. Thank you. Is there
3 anything further then from the defendant?

4 MR. DUFFETT: No, sir.

5 THE COURT: Anything further from the
6 Government?

7 MR. JOYCE: No, Your Honor.

8 THE COURT: All right. I'm going to be
9 recessing so that I can reflect upon the arguments I've
10 received. I expect that recess will be about
11 15 minutes after which I'll be back on the bench to
12 finalize this hearing. We will be in recess.

13 (Recess called)

14 THE COURT: I received and considered in
15 arriving at the sentence the marked defendant's
16 exhibits which we just discussed as well as the revised
17 presentence investigation report in this case as well
18 as the written motion for variant sentence that was
19 filed by the defendant.

20 I want to begin with reviewing by the attorneys
21 the applicable provisions of the sentencing guidelines.
22 The total offense level for Mr. Valbrun's offense is
23 26. His criminal history category is 1 and these
24 figures result in a guideline sentencing range of 63 to
25 78 months, a period of supervised release of three

1 years, a fine range of \$12,500 to \$1 million and
2 renders him ineligible for probation.

3 Counsel, are there any objections to what I've
4 just indicated to be the guideline provisions?

5 MR. JOYCE: No, Your Honor.

6 MR. DUFFETT: None other than preserving our
7 objection to Paragraph 19.

8 THE COURT: Thank you. That is preserved. In
9 addition to considering the documents that I've just
10 indicated as part of my sentencing analysis in this
11 case, Mr. Valbrun, I've also, of course, listened
12 carefully to what the lawyers have had to say, I
13 listened carefully to the statements made by the three
14 individuals that spoke here in the courtroom and I also
15 read with care all the letters that were submitted on
16 your behalf.

17 In determining a sentence, it is my responsibility
18 to consider the sentencing guidelines and the range in
19 the case and I've done that. I'm also required by law
20 to consider other factors. These include the nature
21 and circumstances of the offense, your personal history
22 and characteristics, the need for the sentence to
23 reflect the seriousness of the offense, promote respect
24 for the law, provide just punishment, the need for a
25 sentence to afford deterrence, protect the public from

1 further crimes by you and to provide you with needed
2 educational or vocational training, care or other
3 correctional treatment. Also of particular
4 significance, I think, to this sentence is the need to
5 avoid unwarranted sentencing disparities and I'll be
6 discussing that a bit more.

7 I've considered all those factors and others in
8 arriving at your sentence, but my focus has been on
9 your personal history and characteristics as well as
10 the nature and circumstances of the offense. You had a
11 trial. The jury found you guilty of possession with
12 the intent to distribute heroin and cocaine base,
13 aiding and abetting.

14 Turning first to Mr. Valbrun's personal
15 characteristics, today he's 28 years old. Born in
16 Haiti and came to America as a child. He has an
17 extended family here that is close and as a matter of
18 fact has appeared with him at court proceedings. He's
19 not a United States citizen.

20 It's indicated that you grew up in an impoverished
21 section of Boston and has had to make his way by his
22 own efforts. As an adult, he's done that. He's been
23 continuously employed. The record is clear that he's
24 taken responsibility for being a father of his son who
25 is now four, as well as providing for his fiancé and

1 her now nine-year old daughter.

2 He has many people in his life who trust him and
3 obviously care about him as demonstrated today by the
4 people who are present. He's described in these
5 letters as having some very good qualities, being
6 loving, helpful, respectful, generous and someone who
7 can always be counted on. I have no doubt of the
8 sincerity of the way that he's been characterized by
9 those people that know him and therefore took those
10 representations that he has those qualities.

11 Mr. Valbrun was arrested on May 22nd of 2014 and
12 he remained out on bail from that time until his
13 conviction, which was November 24th of 2015. He
14 complied with all requirements of bail as set.

15 He's been incarcerated now since the trial for
16 more than six months. He's had no disciplinary
17 incidents at the Cumberland County Jail. He's
18 participated in -- including several skills related
19 programs as well as religious programming.

20 His criminal history category for purposes of the
21 guideline is one and he has a record having been
22 charged with crimes twice for events unrelated to the
23 current charge, but he has no convictions or other
24 offenses, and neither of the alleged crimes for which
25 he was charged and not convicted involved drugs.

1 He denies any substance abuse history and I can
2 find no other evidence in the record that I have seen
3 to suggest that he's abused drugs or alcohol or is need
4 in treatment for the same.

5 Turning to the circumstances of this offense, Mr.
6 Valbrun was recruited to act as a drug courier along
7 with his half-brother, Mr. Duffaud. In exchange for
8 money, they agreed to hide drugs in a car, rented car,
9 and transport it to Lewiston from Boston.

10 The drugs, besides quantities which are identified
11 in the revised presentence report, consisted of heroin
12 and cocaine base. These were significant quantities
13 and let the record be clear that I adopt the revised
14 presentence report as my findings in all respects.

15 Mr. Valbrun drove the car. Mr. Duffaud was in the
16 passenger seat in the front. In the back were Mr.
17 Valbrun's son, then age two, and his fiancé's daughter,
18 age nine. There's been no plausible explanation given
19 for the presence of the children during the commission
20 of this crime other than that suggested by Mr. Joyce;
21 that the presence of the children would lend an air of
22 legality to what was going on. They were decoys, in
23 effect, and of course the presence of the children
24 makes this particularly appalling.

25 At trial, Mr. Valbrun testified that he was not

1 aware that there were drugs in the car and that his
2 purpose in coming to Maine was to purchase a cellphone;
3 in other words, he positioned himself as perhaps an
4 unwitting victim of his co-defendant, Mr. Duffaud. His
5 version of his involvement is, of course, in direct
6 conflict with a substantial amount of evidence that was
7 received which established that, in fact, he knew
8 exactly what he was doing and what was going on, even
9 evidence of a phone conversation which reflected that
10 he knew exactly what was going on and it's directly in
11 conflict with the jury's verdict.

12 As a result, Mr. Valbrun has received an
13 enhancement under the guidelines for obstruction of
14 justice and, Mr. Valbrun, I will say to you directly
15 now that you have an absolute right to testify in this
16 case and I certainly would not in any way factor into
17 or hold against you in arriving at a sentence in this
18 case the fact that you chose to have a trial, the right
19 to testify, those are your rights, but you do not have
20 the right to take the stand and testify falsely about a
21 matter that was material to this case.

22 To fall within the purview of this guideline
23 provision for obstruction of justice requires a finding
24 that there was false testimony under oath concerning a
25 matter material to the proceeding and that testimony

1 was given with the willful intent to provide false
2 testimony rather than as a result of confusion, mistake
3 or faulty memory.

4 Not only did the jury reject Mr. Valbrun's version
5 of what was going on and what was in his mind, but I,
6 of course, was present for his testimony myself and I
7 am satisfied that, in fact, testimony was false and
8 qualifies as perjury for purposes of the application of
9 the guideline provision that we're discussing, that is,
10 obstructing justice.

11 Mr. Valbrun's commission of this crime, which is
12 serious, and his false testimony, which the jury
13 rejected and I have found to be false, establish a need
14 for a sentence of imprisonment in this case that will
15 reflect that, reflect the seriousness of all this and
16 not unduly minimize the seriousness of it.

17 The seriousness of this particular crime has to be
18 understood in the context of the opiate crisis that is
19 devastating the lives of innumerable people in Maine
20 and elsewhere. It is taking a particular toll on the
21 Lewiston/Auburn community and, of course, this is the
22 community where Mr. Valbrun and Duffaud were going to
23 be delivering the drugs they were transporting.

24 Now, mention has been made of the sentence that I
25 imposed on Mr. Duffaud, Mr. Valbrun's co-defendant in

1 this case, and one of the objectives of sentencing is
2 to avoid unwarranted disparities in sentences and the
3 keyword there is unwarranted because there are cases in
4 which sentencing disparities are warranted and I
5 conclude that this is one, and I believe that the
6 disparity as between the sentence Mr. Duffaud received
7 and that Mr. Valbrun should receive is required and
8 justified on the basis that Mr. Valbrun -- it was Mr.
9 Valbrun who was responsible for involving his son and
10 his fiancé's daughter in the commission of this crime
11 and, in addition, it is Mr. Valbrun who testified
12 falsely.

13 However, the period of incarceration in this case
14 has to also stand for Mr. Valbrun's personal history
15 and characteristics that I've already described and
16 that are more fully described in the revised
17 presentence investigation report. Here I have an adult
18 before me whose life is otherwise marked by being
19 dutiful about his work, taking his personal
20 responsibility seriously, earning the trust of his
21 family and the people that are close to him and who has
22 no criminal record. I have also considered, as I've
23 been urged to, his family circumstances and the impact
24 of his incarceration on his son.

25 I would note that the lower end of the guideline

1 range in this case is 63 months. That means the
2 sentence would be more than five years. Weighing all
3 of this, I have concluded that on balance, a
4 substantial prison sentence must be imposed because of
5 the seriousness of the offense and the other
6 circumstances that I've just described that contribute
7 to my view that this was a serious offense, but I also
8 conclude that the section 3553(a) factors related to
9 Mr. Valbrun's personal history and characteristics do
10 support a variant below the guideline sentence.

11 And so before I impose sentence, counsel, have I
12 addressed any of the issues that you've raised with
13 respect to sentence in this case?

14 MR. JOYCE: Yes, you have.

15 MR. DUFFETT: Yes.

16 THE COURT: All right. Mr. Valbrun, if you
17 will stand please. Based upon all these
18 considerations, Mr. Valbrun, it's my responsibility to
19 arrive at a sentence of imprisonment that is
20 sufficient, but not greater than that necessary to
21 achieve its purposes and the primary purposes of the
22 sentence is -- the sentence in this case it seems to me
23 has to reflect the seriousness of what's occurred and
24 provide for just punishment and also provide adequate
25 deterrence by not unduly minimizing the crime.

1 For those reasons, I conclude that what is just
2 and fair under all these circumstances is that you be
3 committed to the custody of the U.S. Bureau of Prisons
4 to be imprisoned for a total term of 28 months.

5 Attorney Duffett, are you making any respect with
6 respect to Mr. Valbrun's placement?

7 MR. DUFFETT: Near Massachusetts, if possible.

8 THE COURT: All right. And so I will so
9 indicate in the judgment in this case. And so Mr.
10 Valbrun, at the conclusion of this hearing, you'll be
11 remanded to the custody of the United States Marshal to
12 begin your sentence.

13 Upon release from imprisonment, I'm ordering that
14 you be on supervised release for a term of three years.
15 You're responsible to report to the probation office in
16 the district to which you are released within 72 hours.
17 You're not to commit another federal, state or local
18 crime. You're not to illegally possess a controlled
19 substance. You are to cooperate in the collection of
20 DNA as directed and you're not to possess a firearm,
21 ammunition, destructive device or any other dangerous
22 weapon; do you understand?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: I'm imposing the Court's standard
25 conditions of release adopted in this district.

1 Attorney Duffett, have you reviewed with Mr. Valbrun
2 the standard conditions?

3 MR. DUFFETT: Yes.

4 THE COURT: And are you satisfied that he
5 understands them?

6 MR. DUFFETT: Yes.

7 THE COURT: Mr. Valbrun, is that correct, you
8 understand the standard conditions?

9 THE DEFENDANT: Yes, Your Honor.

10 THE COURT: I'm also imposing the following
11 special condition of release. A U.S. probation officer
12 may conduct a search of you and of anything you own,
13 use or possess if the officer reasonably suspects that
14 you are violating a condition of supervised release,
15 and reasonably suspects that evidence of the violation
16 will be found in the areas to be searched. Searches
17 must be conducted at a reasonable time and in a
18 reasonable manner. Failure to submit to a search may
19 be grounds for revocation of release.

20 Is there any objection to that special condition?

21 MR. DUFFETT: No.

22 THE DEFENDANT: No, sir.

23 THE COURT: All right. And you understand it,
24 Mr. Valbrun?

25 THE DEFENDANT: Yes, Your Honor.

1 THE COURT: I'm imposing a special assessment
2 of \$100. I find Mr. Valbrun that you do not have the
3 ability to pay a fine and therefore I'm not going to
4 impose a fine in this case and as I recall, Attorney
5 Joyce, there's no request for forfeiture in this case;
6 is there?

7 MR. JOYCE: That's correct, Your Honor.

8 THE COURT: Thank you. Before I advise Mr.
9 Valbrun of his right to appeal, counsel, is there
10 anything else that I've not addressed that you believe
11 needs to be addressed?

12 MR. JOYCE: No, Your Honor.

13 MR. DUFFETT: No, sir.

14 THE COURT: Mr. Valbrun, to exercise your
15 right to appeal your conviction and the sentence that
16 I've just imposed, you must file with the clerk of
17 court within 14 days of today a written notice of
18 appeal; do you understand?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: If you fail to do that, you'll
21 have given up your right to appeal both the sentence
22 and the conviction; do you understand?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: Also, if you can't afford to file
25 the appeal, you can appeal without cost. Simply

1 request the clerk to prepare and file the notice of
2 appeal on your behalf. Again, do you understand?

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: Mr. Valbrun, by all indications of
5 the record that I have in front of me, it's my
6 expectation that once you've completed your prison
7 sentence that you're not going to commit more crimes.

8 THE DEFENDANT: No, Your Honor.

9 THE COURT: That has not been your path in
10 life until now and this offense and the way you
11 conducted yourself at trial are beyond my ability to
12 explain, but I truly hope that they were an aberration
13 for you and that the trust that so many people seem to
14 have in you is really in the end who you really are and
15 what you're made of, that you made some terrible
16 judgments here and that have landed you in terrible
17 trouble, but that you have it in you to get beyond
18 this.

19 Serve your prison time, be successful on
20 supervision and when you're done with this, move on
21 with your life and do the right thing. So that's my
22 expectation for you and that's what I hope you will do.
23 I hope that you will use your time incarcerated to
24 improve yourself and take advantage of everything
25 that's offered to you and that's a big down time. It's

1 a chance to come out a better person and that's my hope
2 for you.

3 With that, counsel, anything further?

4 MR. JOYCE: No, Your Honor, thank you.

5 THE COURT: All right. Court will be in
6 recess.

7 (End of proceeding).

8 C E R T I F I C A T I O N

9 I, Dennis Ford, Official Court Reporter for the United
10 States District Court, District of Maine, certify that
11 the foregoing is a correct transcript from the record
12 of proceedings in the above-entitled matter.

13 Dated: September 29, 2016

14 /s/ Dennis Ford

15 Official Court Reporter

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